

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 100 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VIVEK VINUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HN BRAHMBHATT for Petitioner

MR A J DESAI, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 19/03/98

ORAL JUDGEMENT

Heard learned Advocate Mr. H.N. Brahmhatt for the petitioner and learned A.P.P Mr. A.J. Desai for the respondent.

Rule. Learned A.P.P. waives service of rule.

The petitioner has challenged the legality and

propriety of the order dated 2-7-1997 passed by the learned Additional City Sessions Judge, Court no.18, Ahmedabad in the proceedings of Criminal Revision Application no.163/'97; that by the said impugned order, the learned Additional City Sessions Judge has rejected the Revision Application which was filed against the order passed by the learned Metropolitan Magistrate, Court no.4, Ahmedabad in the proceedings of Prohibition Case no.5146/'97 registered at Kagdapith Police Station.

The relevant and material facts could be listed as under:

That the petitioner is the owner of Tata Sumo make vehicle bearing registration no.GJ-7-H-5655; that the petitioner alongwith said vehicle was taken into custody by Kagdapith Police on the allegations that the petitioner is involved in illegal transport of liquor in violation of the provisions of the Bombay Prohibition Act; that the said vehicle was seized by Kagdapith Police as Muddammal during the investigation of the said offence.

The petitioner has moved application dated 19-6-1997 to the Court of Metropolitan Magistrate, Court no.4 with a prayer to claim the interim custody of the said vehicle pending the further investigation and proceedings on the ground that if the vehicle would remain unused and unattended for pretty long time, the petitioner would suffer heavy damage as vehicle would be useless without maintenance.

The learned Metropolitan Magistrate heard the application and vide order dated 25-6-1997 rejected the application on the ground that vehicle having been used for the purpose of illegal transfer of liquor and as the petitioner himself was driving the said vehicle at the time when the vehicle was intercepted, the custody of the vehicle cannot be given to the petitioner. That being aggrieved and dissatisfied by the said order, the petitioner preferred Criminal Revision Application no.163/97 in the Court of Additional City Sessions Judge, Ahmedabad.

That the Additional City Sessions Judge, Ahmedabad, Court no.18 decided the said Criminal Revision Application no.163/'97 by passing the impugned order dated 2-7-1997 and rejected the prayer of the petitioner on the ground that the custody of the vehicle cannot be entrusted to the petitioner as the same is involved in transport of illicit country liquor.

Shri Brahmabhatt, learned Advocate appearing for the petitioner has urged that the vehicle is involved in alleged offence for the first time and petitioner is also accused of such offence for the first time; that considering the said fact if the temporary custody of the vehicle is not entrusted to the petitioner by imposing appropriate conditions the vehicle would be useless at the end of the trial and the petitioner shall suffer irreparable loss which cannot be compensated in terms of money.

Learned A.P.P. Shri A.J. Desai has stated that if the Court decides to give interim custody to the petitioner some strict conditions should be imposed including security and undertaking of the petitioner to produce the vehicle as and when called for and also that the petitioner shall not transfer the same till further orders.

On the basis of the above stated discussion, in my opinion, it will not be unjust or improper if interim custody of the said vehicle is given to the present petitioner on appropriate conditions pending the final disposal of the trial arising from offence registered vide Prohibition Case no.5146/'97 at Kagdapith Police Station, Ahmedabad. Hence, the following directions are given:-

That the vehicle bearing Registration no.GJ-7-H-5655 lying as Muddammal with Kagdapith Police Station in the Prohibition Crime Register no.5146/'97 be returned to the petitioner by way of interim custody pending the final disposal of the trial arising from the above stated Prohibition Case on the following conditions:

- (a) The petitioner shall furnish a solvent security for the amount of Rs.3,00,000/(Rupees three lacs).
- (b) The petitioner shall file undertaking in the trial Court to the effect that the petitioner shall not transfer or part with the possession of the subject vehicle without the prior permission of this Court and shall produce the vehicle as and when called for either by the Court or Investigating Agency.

Rule is made absolute accordingly. No order as to

costs. Direct service is permitted.

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